EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

In Re: NEW YORK CITY ASBESTOS LITIGATION,

THE FOLLOWING PLAINTIFFS FROM THE NOVEMBER 2004 NYCAL *IN EXTREMIS* CLUSTERS:

ALIYE D. AK	(Index No. 104333/04)
JENNIE BAHR	(Index No. 104580/04)
HON. JOHN S. LOCKMAN	(Index No. 104156/04)
JOHN MAGARINO	(Index No. 102272/04)
PATRICIA MALEK	(Index No. 106547/04)
JOHN A. O'NEILL	(Index No. 103962/04)
RICHARD PEYREK	(Index No. 104155/04)
DONALD PORTUES	(Index No. 101675/04)

Plaintiffs,

-against-

AQUA-CHEM, INC., *et al.*,

Defendants

INDEX NOS.: 104333/04 *et al.*

DECISION AND ORDER

Hon. Martin Shulman, J.:

The eight captioned matters, part of a November, 2004 *In extremis* cluster of asbestos cases (collectively,"Plaintiffs") , have been referred to this Court for trial. Four out of the eight named Plaintiffs are deceased. Pursuant to CPLR §602(a), Plaintiffs' counsel moves by order to show cause ("OSC") to consolidate these eight personal injury/wrongful death actions for joint trial claiming the existence of common questions of law and fact. Three of the co-defendants; *viz.*, Kentile Floors, Inc. ("Kentile") Keyspan Generation, LLC ("Keyspan") and Burnham Holdings, Inc. ("Burnham"), oppose the OSC, each contending that these cases' dissimilarities

outweigh their commonalities.[1]

Relevant Factual Background

Plaintiffs are jointly represented by Belluck & Fox, LLP. All eight Plaintiffs were/are afflicted with an asbestos-induced cancer or disease (six contracted mesothelioma, one contracted and died from severe asbestosis and one non-smoker is suffering from asbestosis and lung cancer). Four Plaintiffs died from their disease and the four living plaintiffs are terminally ill. Admittedly, the Plaintiffs were not exposed to identical asbestos containing products and materials ("ACM") at one common work site, but rather were exposed to similar types of ACM at similar work sites (such as ships and ship yards and construction sites [2]). Plaintiffs became exposed to ACM (i.e., gaskets, boilers, pumps, turbines, brakes, floor tiles, roofing materials, joint compounds and other similar products and materials) either as end-users and bystanders or via second hand exposure from family members who worked with these types of ACM or in proximity thereof. While Plaintiffs' discrete exposure periods range from the 1940s to the 1980s, however, it is expected that the proof as to the manner and type of their ACM exposures will overlap for the Plaintiffs.

Discussion

CPLR §602(a) permits a court to consolidate two or more actions for joint trials if

[1] Among these eight actions, Kentile is a defendant in only one case initiated by decedent-plaintiff, Alye D. Ak (Kentile Opp. Aff. at ¶4), Keyspan is a named defendant in only one case initiated by decedent-plaintiff, John Magarino (Keyspan Opp. Aff. at ¶3) and Burnham is a named defendant in the Ak and Magarino actions as well as four other actions (Burnham Opp. Aff. at ¶3).

[2] Two Plaintiffs claim exposure to ACM at residential sites as well.

they involve common questions of law and fact. "Consolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense and prevent the injustice which would result from divergent decisions based on the same facts. . ." Chinatown Apartments, Inc. V. New York City Transit Authority, 100 A.D.2d 824, 474 N.Y.S.2d 673 (1st Dept., 1984). Joint trials will also foster judicial economy, quicken the disposition of cases (Matter of City of Rochester v. Levin, 57 A.D.2d 700, 395 N.Y.S.2d 773 [4th Dept., 1977]) and potentially encourage settlements (Matter of New York City Asbestos Litigation [Brooklyn Naval Shipyard Cases], 188 A.D.2d 214, 225, 593 N.Y.S.2d 43, 50 [1st Dept., 1993]).

With this cluster of eight asbestos actions, Burnham, Keyspan and Kentile urge the court to consider certain suggested factors in determining whether joint trials here are appropriate, to wit: "(1) common worksite; (2) similar occupation; (3) similar time of exposure; (4) type of disease; (5) whether plaintiffs are living or deceased; (6) status of discovery in each case; (7) whether all plaintiffs are represented by the same counsel; and (8) type of cancer alleged." Malcolm v. National Gypsum Co., 995 F.2d 346, 351-352 (2nd Cir., 1993).

Plaintiffs are represented by the same counsel, Bullock & Fox. While four of the plaintiffs have died from asbestos-causing diseases, their deaths will not prejudice the jury against the defendants , vis-a-vis, the living plaintiffs as the latter are all terminally ill and will unfortunately suffer the same fate. Moreover, these three defendants' opposition affirmations to Plaintiffs' consolidation OSC do not probatively contend that any Plaintiff's alleged smoking habit, where applicable, constitutes an additional

substantial factor in any of the Plaintiffs' cases. Without this significant factor, asbestosis, lung cancer and mesothelioma otherwise share a comparable etiology and pathology. Nor did these affirmations convincingly show any one defendant seriously lagging behind the Case Management Order's discovery schedule so as not to be ready for the March 14, 2005 trial date and with this Court's assistance, any discovery "loose ends" can easily be resolved during this pre-trial period. In addition, the state of the art testimony and other expert testimony will be substantially common to all Plaintiffs. And most of the remaining defendants are named in two or more actions comprising this *in extremis* cluster.

This Court recognizes that the alleged periods and nature of ACM exposure among the eight plaintiffs do not present precise commonalities meeting all of the Malcolm factors; still, there exist sufficient similarities to support a joint trial. Nor are these factors solely controlling as to the court's exercise of discretion whether or not to grant Plaintiffs' OSC for joint trials. Consideration can be had of other commonalities such as the existence of bankrupt, absentee tortfeasors which will arguably overlap in all of these actions and defendants' anticipated game plan to establish these tortfeasors' liability and mitigate their own liability under CPLR Article 16. See, Tancredi v. A.C.&S., Inc. (In re N.Y.City Abestos Litigation), 6 A.D.2d 352, 775 N.Y.S.2d 520 (1st Dept., 2004).

Trying these eight cases at the same time will be difficult, but not insurmountable. The use of suggested jury innovations such as juror note-taking and notebooks, extensive preliminary instructions, attorneys' interim commentary (short summations at

EXHIBIT D

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 1

In Re: NEW YORK CITY ASBESTOS LITIGATION,

Index Nos.: 102034/05 *et al.*

THE FOLLOWING PLAINTIFFS FROM THE NOVEMBER 2005 NYCAL *IN EXTREMIS* CLUSTERS

Decision and Order

PHILIP ALTHOLZ, Index No: 102034-05
MARION CZYS (DEC.) Index No: 106990-05
CURTIS EBERHARDT, JR. Index No: 102909-05
DAVID HUNTER (DEC.) Index No: 102027-05
EUGENE LIGHT (DEC.) Index No: 102032-05
WILLIAM MCCARTHY Index No: 102910-05
SAMMY PAEZ (DEC.) Index No: 103663-05
JOHN QUINN Index No: 103664-05
NOEL STEININGER Index No: 102675-05

Plaintiffs,

-against-

AMERICAN STANDARD, INC., *et al.*,

Defendants.

Hon. Martin Shulman:

The nine (9) captioned matters, part of a November 2005 *in extremis* cluster of asbestos cases (collectively, "Plaintiffs") have been referred to this Court for trial. Four (4) out of the nine (9) Plaintiffs are deceased. Pursuant to CPLR §602(a), Plaintiffs' counsel moves by Order to Show Cause ("OSC") to consolidate these nine (9) personal injury/wrongful death actions for joint trial claiming the existence of common questions of

law and fact (*e.g.*, eight out of nine Plaintiffs contracted mesothelioma from asbestos exposure [one still surviving plaintiff, Steininger, has stage IV lung cancer], plaintiffs had similar occupations, times of exposure and types of worksites, all nine Plaintiffs were/are terminally ill, and there are common defendants in some of the cases and/or overlapping bankrupt tortfeasors in all of the cases, etc.).

Approximately forty-three defendants submitted opposition papers[1] contending the following differences which purportedly predominate over the common factors: (1) Plaintiffs did not share a common work site or even a common type of work site; (2) all nine Plaintiffs did not share a common occupation; (3) Plaintiffs' alleged asbestos exposure occurred over a period spanning fifty years (1940's -1990's) but none were exposed during an identically discrete time period; (4) because Steininger was the only plaintiff to contract lung cancer, joining his case with the other eight cases will unduly lengthen the trial as the pathology and etiology of lung cancer and mesothelioma are substantively different; (5) defendants in cases involving decedent Plaintiffs will be prejudiced by evidence of pain and suffering presented from the living Plaintiffs; (6) there is outstanding discovery which will be impeded if the joint trials were to go forward; and (7) there are no asbestos containing products which Plaintiffs claim exposure to that are common to all nine Plaintiffs and there is no commonality in the manner of Plaintiffs' alleged asbestos exposure.

[1] Although the court was apprized of certain alleged differences which are unique to a particular plaintiff, nonetheless, most of Defendants' opposition papers uniformly contain the same arguments and cite to the same case law for the proposition that joint trials of all nine plaintiffs would be inappropriate. In this context, a number of defendants submitted letters adopting the facts and legal arguments of their co-defendants in opposition to plaintiffs' OSC seeking joint trials of all nine plaintiffs.

Discussion

CPLR §602(a) permits a court to consolidate two or more actions for joint trials if they involve common questions of law or fact. "Consolidation is appropriate where it will avoid unnecessary duplication of trials, save unnecessary costs and expense and prevent the injustice which would result from divergent decisions based on the same facts. . ." Chinatown Apartments, Inc. v. New York City Transit Authority, 100 A.D.2d 824, 474 N.Y.S.2d 673 (1st Dept., 1984). Joint trials will also foster judicial economy, quicken the disposition of cases (Matter of City of Rochester v. Levin, 57 A.D.2d 700, 395 N.Y.S.2d 773 [4th Dept., 1977]) and potentially encourage settlements (Matter of New York City Asbestos Litigation [Brooklyn Naval Shipyard Cases], 188 A.D.2d 214, 225, 593 N.Y.S.2d 43, 50 [1st Dept., 1993]). On the other hand, "where individual issues predominate, concerning particular circumstances applicable to each plaintiff. . ." (*Bender v. Underwood*, 93 A.D.2d 747, 748, 461 N.Y.S.2d 301, 302 [1st Dept., 1983]) and one or more of the defendants, then joint trials would be ill-advised.

In determining the merits of Plaintiffs' OSC, this Court must consider certain suggested factors delineated in *Malcolm v. National Gypsum Co.*, 995 F.2d 346, 351-352 (2nd Cir., 1993) such as: "(1) common worksite; (2) similar occupation; (3) similar time of exposure; (4) type of disease; (5) whether Plaintiffs are living or deceased; (6) status of discovery in each case; (7) whether all Plaintiffs are represented by the same counsel; and (8) type of cancer alleged."

A review of the dueling papers reveals that certain commonalities do exist and certain issues defendants collectively claim predominate over the commonalities will not defeat Plaintiffs' application for joint trials generally. First, Plaintiffs are represented by the same law firm. Second, while four of the Plaintiffs have died from asbestos causing disease, their deaths will not prejudice the jury against the defendants, *vis-a-vis*, the living Plaintiffs as the latter are all terminally ill and will unfortunately suffer the same fate. Third, since eight out of nine Plaintiffs suffered from mesothelioma, there is overwhelming commonality as to this type of disease so that the inclusion of a case involving a plaintiff suffering from lung cancer for joint trials, generally, will not cause undue delay or confuse the jury as these diseases do share a comparable etiology and pathology. Fourth, this Court is not convinced that extensive discovery still remains to either warrant denying the OSC entirely or delaying the trial date. To the extent certain discovery remains extant as to any of the parties, this Court will be responsive to any reasonable request and will tailor the trial sessions to avoid any prejudice or due process concerns. Fifth, the *Malcolm* factors do not compel the Plaintiffs to share a *common* occupation or *common* time of exposure. Thus, this Court finds there are similarities in the manner in which Plaintiffs performed different tasks which exposed them to asbestos containing material or products during overlapping periods of time from the 1940's to the 1990's. Sixth, against this backdrop, the state of the art testimony and other expert testimony in a general way will be substantially common to all Plaintiffs. Finally, consideration can be had of other commonalities such as the existence of bankrupt, absentee tortfeasors which will arguably overlap in all of these actions and defendants' anticipated game plan to establish these tortfeasors' liability and

exposure from dust brought home from decedent's husband who worked at various shipments [sic]. . ." (Sapon Opp. Aff. at ¶ 3). On the record before the court at this juncture, it remains unclear whether a claim of damages for this proven type of exposure remains viable as a matter of law (*see* Court of Appeals decision in *The Matter of New York City Asbestos Litigation [Holdampf, et al. v. Port Authority, et al.]*, 2005 N.Y. LEXIS 2720; 2005 N.Y. Slip. Op. 7863). It is further noted that among the approximately eighteen defendants in the *Czys* case (and for that matter among all forty-three remaining defendants), defendant Trump Management Inc. is the only premises owner. Therefore, this Court is persuaded that evidence of liability on the part of manufacturers, contractors and product distributers could easily "splash" on this defendant and unduly prejudice this defendant's right to have a fair and impartial trial.

Having reviewed McCarthy's work history on a chart (denominated "Chart A, Jobsite-Specific Exposure History") attached to plaintiff's responses to certain amended interrogatories (*e.g.*, Exhibit M to Orenstein Opp. Aff.), it is readily apparent that McCarthy's alleged exposure occurred as a merchant marine, *inter alia*, performing mechanical/engineering functions on ships at sea. Evidently, "McCarthy's work sites are comprised of commercial ships upon which he sailed as a merchant seaman or boarded as a maritime consultant. No other plaintiff. . .alleges asbestos exposure as an employee aboard a commercial ship [at sea]. . ." (Koczko Opp. Aff. at ¶12). Although this issue has not been fully briefed by the parties, this Court reasonably surmises that the federal maritime law is implicated. This Court shares defense counsel's concern that it could prove to be confusing for the jury to sort out the varying elements of liability and damages

governed by New York's negligence and product liability laws and those under federal maritime law (the latter is argued to be controlling in the *McCarthy* matter).The possibility for such confusion could greatly prejudice the Farrell Lines Incorporated and American President Lines, Ltd., defendant shipowners, and therefore this case should also be severed for a separate trial.

As stated by this Court in prior decisions, trying these six cases at the same time will be difficult, but not insurmountable. The use of suggested jury innovations such as juror note-taking and notebooks, extensive preliminary instructions, attorneys' interim commentary (short summations at different stages during the trial), juror questions, written copies of the special verdict sheets for jury use during summations and a written copy of the court's charge to the deliberating jury should avoid any confusion for the jury in sorting out the respective liabilities and damages attributable to each of the six Plaintiffs.

This constitutes the Decision and Order of this Court. Courtesy copies of same have been furnished to counsel for the parties.

Dated: New York, New York
January 19, 2006

_s/_____
HON. MARTIN SHULMAN, J.S.C.

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Robert Lippmann Justice PART 21

Joseph Tortorella

-v-

A.C.&S.

INDEX NO. 100297/02

MOTION DATE 11/14/05

MOTION SEQ. NO. ____

MOTION CAL. NO. ____

The following papers, numbered 1 to ____ were read on this motion to/for ____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion

Plaintiff's motion to Consolidate the Lung Cancer cases with the meso thelioma cases for trial is granted. There have been no reversals on that ground by the First Departm

Dated: 11/14/05

RDC J.S.C.

HON. ROBERT D. LIPPMANN J.S.C.

NOV 14 2005

Check one: ☐ FINAL DISPOSITION ☒ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

FOR THE FOLLOWING REASON(S):

SUBMITTED HEREWITH IS HEREBY RESPECTFULLY REFERRED TO JUSTICE

EXHIBIT F

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: TRIAL TERM PART 54

- X

CRAIG GILBERT, et al,

Plaintiffs,

- against -

ARMSTRONG CONTRACTING & SUPPLY, et al,

Defendants.

- X

Index Nos. 104699/01, 104981/01, 110435/01, 110741/01
August 19, 2002

111 Centre Street
New York, New York 10007

B E F O R E: THE HONORABLE SHIRLEY WERNER KORNREICH,
Justice,

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Messrs. Ross & Hardies
Attorneys for American Standard, Inc.
BY: Yvette Harmon, Esq., of Counsel
Ted McCullough, Esq. of Counsel

Messrs. O'Melveny & Myers
Attorneys for Treadwell Corp. and Courter & Co.
By: John L. Altieri, Jr., Esq., of Counsel
Thomas G. Carruthers, Esq. Counsel

Messrs. Cerussi & Spring
Attorneys for 3M
By: Michael A. Cerussi, Esq. of Counsel

Evelyn Mysch, C.S.R.
Official Court Reporter

with this prior to trial and see what he wants to present and make argument and make a decision.

MR. McCULLOUGH: I think that's fine.

MR. LEONARD: Can I just -- are we getting all of the documents, medical literature that the plaintiffs' expert is going to rely on, is that the deal?

THE COURT: I am going to have to make rulings on that. I would like to make rulings prior to trial.

MR. LEONARD: We are going to be afforded that?

THE COURT: What do you mean, afforded that?

MR. LEONARD: When you make a particular ruling on whether that particular document is admissible or not, are we going to get copies?

THE COURT: You can get it yourself. Why should they have to provide it for you?

MR. LEONARD: Yes.

MR. CERUSSI: Michael Cerussi. I represent Minnesota Mining and Manufacturing.

THE COURT: 3M.

MR. CERUSSI: We were first before you May 20th, was the first time you brought counsel together on this case when you discussed the idea that

you were going to consolidate these four cases.

THE COURT: I remember.

MR. CERUSSI: I raised an objection and asked for the opportunity to --

THE COURT: And there was a decision.

MR. CERUSSI: There was?

THE COURT: I don't know what happened to it.

THE CLERK: I got it back. They want it on separate gray sheets.

THE COURT: You can take a look at the decision.

MR. CERUSSI: There is a decision?

THE COURT: Yes. Apparently I put it on one gray sheet instead of many gray sheets and it was rejected by the clerk's office.

MR. CERUSSI: That decision probably adheres to the original impression to consolidate these cases, surprise, surprise.

I just wanted to point out, your Honor, that what this gentleman -- what Mr. McCullough raised with respect to state of the art, this presents another wrinkle in the problems with consolidating these cases for trial.

I represent a client that's in one case, the

Marzigliano case. I have exposures that alleges to have occurred 1955 and 1962. The state of the art documents that the plaintiff relies on, in putting in the state of the art case in these type of cases, has documents, has treatises, scientific studies which have varying dates of authorship. They did not go back to late 19th century, much of them succeed 1960. They come into 1970. You are going to have to make a decision in front of the same jury what documents are relevant or not, what documents may be admitted or are not admitted for notice purposes against the different defendants in this case, depending upon what you admit and when the date of authorship on creation is.

THE COURT: I don't think that's as complicated as that. There are going to be notebooks in the case. As I have said earlier, we have to sit down. That's another thing that has to be done. Lead counsel and perhaps any other attorney who wants to be there, we are going to create notebooks. The notebooks will have the four plaintiffs, they will have each of the defendants under each of the plaintiffs. They will have the product manufactured and we will decide, I assume, we can have a portion that says state of the art, and the jury can take notes. There will be dates. The jury is going to have to decide. These are all

factual issues which will be before the jury and take notes on each of these things. They will keep it straight.

MR. CERUSSI: While I share your optimistic view of the intelligence of the jury as we convene, people think we are separate and distinct. I would ask you to be sensitive to this fact. This is another issue that you are going to have to deal with which, in my opinion as counsel, is complicating and prejudicing 3M in our defending the one case with one plaintiff over a minimal period of time that there's alleged to be exposure. I continue to object. I continue to oppose the consolidated trial of these cases.

THE COURT: I understand, and again, I am not going to do what you asked me to do. I am not even severing out the counterclaims. I think it would be a tremendously costly proceeding were we to sever these cases for the -- for the plaintiffs, for the Court, for the whole judicial system. There are seven defendants that appear in every single case. There are other defendants that appear in two or three cases. We are talking about mesothelioma, which all plaintiffs and the -- and claim they have, the medicine is the same for all of this. A lot of the proof is the same. They are staying together.

MR. CERUSSI: With all due respect, and continue to disagree with the decision that you have made in the case. With all due respect to the judicial system in this county, in this state, in this country, that does not mean that just because there should be multiple trials which do cost money, that does not mean the rights of the individual defendants should be swept away to celebrate judicial economy can me.

THE COURT: I hope I'm not sweeping them away.

MR. CERUSSI: I understand the pressure that you are under. I believe the First Department law is that these cases should not be consolidated because a sufficient disparity among questions of fact and issues of law are here, but --

THE COURT: I understand what your position, is. You have an exception.

MR. CERUSSI: I don't need an exception. I need an order.

THE COURT: You have an order. Unfortunately the order never got filed for procedure reasons. You can take a copy of the order, look at it and appeal it, as far as I'm concerned. That is my order, that is my decision, and I believe that the rights of all of the defendants can be protected in

this case and it will be a fair tri-

MR. LONG: Just one thing that you just touched on. In the past, there have been appeals to the First Department [illegible] to consolidation orders and in some of those appeals have [illegible] the trial, so I want to let you know this is a possibility, if any of the defendants appeal and that's something we have to factor in with respect to the trial.

THE COURT: I understand that. I usually send my opinions out, I almost always do. In this case, given the amount of defendants, I didn't.

MS. HARMON: Is it possible we can set a date for the Frye hearing because both -- Mr. Long is going to have available some -- his experts and ours, I know it's going to be hard to do some scheduling on that.

THE COURT: I would like to set dates for the Frye hearing, the issue of the relevant articles, you know which articles are relevant and which aren't. Both of those we need dates on. And we are going to be doing EBTs during this period as well.

MR. LONG: Not for the Frye. We have to finish Dr. Bolster's examination. I don't know if Greenhagen(ph.) --

MR. McCULLOUGH: It doesn't apply.

remaining defendants' list that are no longer defendants in this case. Dana, Certainty and I wanted them removed before they get into any --

THE COURT: What happened?

MR. ROBERTS: They have been settled out of the case months ago.

THE COURT: What about Amchem and Union Carbide.

MR. CASIMIR: We are discussing that.

* * *

C E R T I F I C A T E

I, Evelyn Mysch, C.S.R., an official court reporter of the State of New York, do hereby certify that the foregoing is a true and accurate transcript of my stenographic notes.

Evelyn Mysch, C.S.R.,
Official Court Reporter.

EXHIBIT G

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 54

- X

NEW YORK CITY ASBESTOS LITIGATION
IN RE:

ALEX RENOW, RONALD SPINELLI, FRANK CAMPA, JOHN N. KEARNS, MARVIN ZATZ, JOHN SMITH

Plaintiffs,

- X

111 Centre Street
New York, New York
July 8, 2004

B E F O R E:

HON. SHIRLEY WERNER KORNREICH, Justice

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Adam H. Alweis
Senior Court Reporter

Proceedings

MS. ETRA: Just -- I'm sorry, just when would you like the Frey motion made?

THE COURT: The in limine motion, you can do it by, I guess, by the 19th.

MS. ETRA: Can we have a separate date for the Frey motion? It is not necessarily a standard motion in this case.

THE COURT: It isn't?

MS. ETRA: Frey motion.

MR. KRISTAL: Your Honor, may we have a clue as to what it involves?

MS. ETRA: I don't profess to know all of the legal applications. It has to do with a claim that the lung cancer, anticipated testimony of your experts with respect to the causes of this patients' lung cancer is not supported by the medical literature.

I also want to note for the record, Your Honor, that prior to the time that our firm got involved with the defense of these defendants, apparently, these cases were consolidated, the Smith and the Kearns case.

THE COURT: Yes.

MS. ETRA: I think it is important, on the record, on behalf of my clients, to document that, in fact, we don't believe this is a proper consolidation

at all because the issues are completely different wit respect to medical issues in the case.

THE COURT: The original Kearns and Smith case were supposed to be tried with nine other cases. I decided to, at least, separate those two out because they were lung cancer cases rather than meso cases.

So, originally, they were in the same cluste: as the meso cases, and the decision was made that they be tried separately over protest.

And that decision stands, and you have an exception.

MS. ETRA: I just need a date for the Frey motion.

THE COURT: If anything, it is not the same. It's not going to be later, because then we are going to need to op for those. The rest of the in limine motion. I don't care if the op gets served on the 21st A couple of days probably would be sufficient. I assume for the op, for most of the in limine motions, the Frey is going to require more time.

MR. KRISTAL: Motions in limine, other than Frey, are supposed to be served on July 19th?

THE COURT: Right, by noon.

MR. KRISTAL: If they are motions that have been made before, two days is not difficult, but I have

tried to continue Mr. Spinelli's deposition on the 6th and 7th. Mr. Long informed us as -- that as a result of his reaction to his latest chemo., that he would not be available in the week of July 26th, at the earliest. We don't know where it is going to lead.

THE COURT: Let me ask you this. As a result of these boxes of materials and these suppliers, are you thinking of third-partying in anybody?

MR. FENTON: No. We are thinking of, you know, proceeding under the Tangresti decision and putting these folks on the verdict sheet and allocating them -- to them.

MR. KRISTAL: So, we are talking first week of September.

THE COURT: Let me ask you this. Are any -- are the other three alive still, the other three mesothelioma people?

MR. TANENBAUM: No, Your Honor.

MR. KRISTAL: No, Your Honor. They passed away.

THE COURT: So, Spinelli is still around, only one still around?

MR. KRISTAL: From what I'm hearing and from my conversation with Mr. Long, I think we need to try -- we would suggest trying the three other mesos

sooner than Spinelli.

MR. FENTON: Your Honor, in that regard, separate and apart from the logistics and the discovery, you had recognized earlier in the motion to consolidate that Spinelli was different. It was a power house case.

THE COURT: I understand all of that. I just hate to separate it out. But, you know what, they have to go. So -- and it doesn't sound like Spinelli is going to be ready by September. It really doesn't. The other three, when can we try them, if we were going to try them in September?

MR. KRISTAL: Well, we currently have the Joseph Roth case pending in front of Justice Evans, where G.E. is the remaining Defendant. Justice Evans gave us a trial date of September 7th. She had been under the impression when she set the trial date, either the week of August 23rd or the week of August 30th, or perhaps both, there were not going to be any jurors because the convention was in town. We are trying to find out if that's correct and which week, if either one, if that's correct for. If jurors are available, parties would like to go back to Justice Evans to move the trial forward.

THE COURT: Well, that is only going to be a

one Defendant -- one Plaintiff case, am I correct?

MR. KRISTAL: That's correct.

MR. TANENBAUM: Yes, Your Honor.

THE COURT: It should be a little shorter as a result.

MR. KRISTAL: Two weeks.

MR. SPEZIALI: Two weeks. It will go quick.

MR. KRISTAL: Right. If we were going to keep the September 7th date with Justice Evans, sometime the last week in September, perhaps September 27th or 28th.

THE COURT: I'm looking. If you do the September 7th date, you'll be finished with the trial by the 23rd, 24th, something like that?

MR. TANENBAUM: Yes, Your Honor.

MR. KRISTAL: Assuming we get a jury that first week and open that first week, that is probably correct.

THE COURT: Why not?

MR. KRISTAL: I'm just saying if -- we should be done.

THE COURT: How about putting the case down for jury selection?

MR. KRISTAL: For jury selection?

THE COURT: To select these three cases.

Proceedings

MR. BANDLAMUDI: Was that September 27th?

THE COURT: September 27th.

MR. BANDLAMUDI: We have a group of cases.

THE COURT: You are?

MR. BANDLAMUDI: Raghu Bandlamudi. We have cases before Judge York that we are supposed to start trial on, September the 9th. That is a firm trial date.

THE COURT: How long do you think that case is going to go?

MR. BANDLAMUDI: There are eight cases in that group. Probably a couple of weeks, not a month.

THE COURT: You're starting September 9th?

MR. BANDLAMUDI: 9th, Your Honor.

THE COURT: That is jury selection or the trial itself?

MR. BANDLAMUDI: That is jury selection.

THE COURT: You know what, let's put it down for October 11th. October 11th. And, perhaps, if Spinelli is ready, we'll go forward with Spinelli as well. We'll do all four. And let's try to get Spinelli ready by that date.

So, it is October 11th for the meso cases, and I'd like an update on all of the remaining Defendants.

Proceedings

MR. KRISTAL: I hope to have -- I will have that to the Court tomorrow.

THE COURT: Tomorrow or Monday, it doesn't make a difference.

MR. TANENBAUM: Thank you, Your Honor.

MR. SPEZIALI: Thank you.

THE COURT: One question, in any motions, that doesn't only go for the Defendants, it went for the Plaintiffs as well in the lung cancer cases?

MR. KRISTAL: Yes.

THE COURT: Thank you.

* * * * * * * * *

IT IS HEREBY CERTIFIED that the foregoing is a true and correct transcript of the proceedings had therein.

Adam H. Alweis

Senior Court Reporter

EXHIBIT H

JIM LONG

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: SHIRLEY WERNER KORNREICH Justice J.S.C. PART 14

Travis D'Amore

-v-

A.C.& I.

INDEX NO. 107871/04

MOTION DATE

MOTION SEQ. NO. 023

MOTION CAL. NO.

The following papers, numbered 1 to 129 were read on this motion to/for a joint trial.

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	1
Answering Affidavits — Exhibits	2,3,4,5,6,7,8,9,10,
Replying Affidavits	

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that this motion to join the following case for trial, is granted: D'Amore (Index # 107871/04) DeMaio (Index # 104217/04); Klapsy (Index # 107416/04) Samaritano (Index # 105394/04); Sauvan (Index # 104053/04) and Thompson (Index # 107791/04). These cases all involve the same disease - mesothelioma - caused by exposure to asbestos. The plaintiffs all are living and in extremis, and discovery in each case is nearly complete. Moreover, the cases involve overlapping periods of exposure to overlapping products and during overlapping time periods. Many of the same experts will be called to testify as to the MH

FOR THE FOLLOWING REASON(S):

Dated: _____

J.S.C.

Check one: ☐ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

and state-of-the-art. Common questions of law [illegible], as well as judicial economy, militate in favor of a joint trial.

The Court is aware that the Klopis case also involves the issue of plaintiff's renal cancer. Nonetheless, the Court believes common questions of law and fact outweigh the need for a separate trial in Klopis.

This shall constitute the decision and order of the Court.

SHIRLEY WERNER KORNREICH
J.S.C.

7/22/05

Trial
July 18/05

EXHIBIT I

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

In Re: New York City Asbestos Litigation

RICHARD BRETTON, ET AL,

Plaintiffs,

Index No. 111000/02

-against-

AC & S, INC., ET AL,

DECISION AND ORDER

Defendants.

LOUIS B. YORK, J.:

Before this Court are personal injury cases which have been assigned to the undersigned justice for trial. They are part of the November 2002 and May 2003 accelerated (In Extremis) Trial Clusters assigned to this Court. All plaintiffs suffer from the disease mesothelioma, which has been caused by asbestos exposure. Defendants move to sever on the ground that these cases have not been appropriately joined for trial and that individual questions predominate over common questions of law and fact. For the reasons discussed infra, the Court orders joint trials for all defendants, except Cummings and Gubitosi.

While the other defendants' exposure overlapped in the 1960's, Cummings and Gubitosi's exposures occurred substantially later than that. They are being severed not because of prejudice to them, but rather the potential prejudice to the other defendants. The state of the art on the later dates they were exposed, tends to be more advanced than that of the other defendants' earlier exposures.

Defendants claim that the Court jumped the gun, first by ordering joint trials on its own motion and then allowing plaintiff to make an oral motion. Defendants claim that this

violates Section 602(a) of the CPLR. The Court disagrees. CPLR 602(a) is vague. Unlike other sections of the CPLR, such as for example a 3211 motion to dismiss which states that "A party may move for ..." or a 3212 motion for summary judgment, which states the same, 602(a) merely states that "the Court upon motion ...". While the weight of authority seems to be that this section requires a motion by one of the parties, it is understandable that the Court wishing to move this case speedily along would grant this relief on its own motion. Nevertheless, the plaintiff moved orally for joint trials and the defendants did not cite any statutory or case law, that it was an improvident exercise of the Court's discretion to allow the motion to be made this way. Moreover, there was no due process violation since the Court allowed the defendants to submit opposition in writing, which they now have done.

The memorandum of one of the defendants stating that I had refused to allow them to put their opposition on the record is a misstatement of what occurred and also a misuse of the memorandum of law. Facts should be asserted in a sworn affidavit. To set the record straight, I was asked by one of the defendants, after we had been discussing the case for some time, for a court reporter. I stated that since I was about to begin conferencing a jury trial that was to begin that day, there was not enough time to call for a court reporter, but I explained that a court reporter would be made available at the next meeting on October 23rd and he could put all of his objections on the record then. A perusal of the record for that meeting will show he did. I did not only say that the only thing in common was that all the plaintiffs suffered from mesothelioma from asbestos, I also emphasized state of the art

evidence - what was known about this common disease and when - would be common to all and the medical testimony regarding asbestos exposure and mesothelioma was also common. Moreover, the evidence involved in these cases is extensive and, requiring their repetition in the incredibly large volume of cases before this Court would mean either these cases could not be tried or the myriad other non-related actions could not be tried. As the Second Circuit Court of Appeals has stated:

> It requires little imagination to recognize that without consolidation, the Courts are simply incapable of handling litigation of such volume. The waste of time and expense involved in empaneling separate juries to decide the same sorts of questions over and over again is staggering. This is all the more true when one recognizes that each successive jury must be educated by expert witnesses to understand the toxicity of asbestos fibers, the etiology of asbestos-induced diseases, the state of the art regarding the industry's knowledge of these dangers through the years, and the economic issues involving loss of services and future income that recur so frequently in these cases.
>
> (*Consorti v Armstrong World Industries*, 72F3rd 1003, 1006 (2d Cir. 1995) vacated on other grounds 518US.1031[1996])

The defendants argue that Seventh Judicial District Asbestos Litigation, 191 Misc2d 625, 744 NYS2d 304 (Supreme Ct. Monroe Cty. 2002) requires that the cases where plaintiffs are still alive should be separated from plaintiffs who have died, the rational being that the sympathy for the deceased plaintiffs will spill over to the plaintiffs who have not died. But in Seventh Judicial District, the cases consisted of plaintiffs with mesothelioma, a fatal disease and other plaintiffs with a non-fatal disease. In that circumstance, it is

understood that there might be undue prejudice to the defendants in cases with plaintiffs who had non-fatal diseases from asbestos. But here, all of the plaintiffs have the fatal disease of mesothelioma, thus minimizing any prejudice to defendants who are litigating against still alive plaintiffs.

The branch of the motions to sever those deceased plaintiffs for whom representatives of the estate has not been appointed appears to be moot. However, in the event that no such administrator is appointed by the time of trial, the Court will entertain a motion to sever.

This case was sent here for trial. Before that, discovery was to be completed before Justice Freedman and the special master. All discovery issues should be sent to them. The Court understands that the Case Management Order contemplates that discovery should be complete when the matter is assigned to a justice for trial. The discovery issues raised in Henry is particularly troublesome. The issue raised there is that discovery has to be completed by cumbersome diplomatic procedures, which will take at least a year. Yet, there is not a single sentence indicating that any such procedures have yet been initiated. This case lay dormant for over two months when it was assigned to another justice before being re-assigned to this Court, over a month ago. The Court wonders what this defendant was doing in those three months, knowing that these were expedited cases. The Court also wonders what working in South American sugar fields has anything to do with Henry's illness. Other than the generalized statement that this should justify severance, the defendants offer no explanation.

The Court is informed that the three defendants for whom a federal court stay was issued have settled with plaintiffs. Therefore, the request that the Torwald case should be severed and only tried after the stay is lifted is now denied as moot.

As to the other defendants who claim that their insurance companies are in a various stages of liquidation, the Court will honor any stay that has been granted when adequate proof is presented to it. So far, no such evidence has been presented.

The similarity of issues and facts in the remaining six cases which are that all the plaintiffs are represented by the same parties, their exposures overlap, the state of the art applies to all of them and most of these defendants are litigants in more than one case, and the expert testimony as to how exposure to asbestos causes mesothelioma and the details of the disease applies to all of them. Moreover, joint trials will alleviate the crushing caseloads that these mass torts impose upon the courts.

While trying multiple cases at the same time is a formidable challenge, it has been successfully met by this Court and others. Note taking in trial notebooks in which plaintiffs in each case are separated out from each other, together with curative and clarifying instructions by the Court, should remove defendants' objections that joint trials are too confusing for the jury.

The Court finds it disappointing that none of the submissions on severance takes account of the need for speedy adjudication of those cases involving dying plaintiffs or the

great inconvenience to the litigants and the courts that will result in trying these and other mass tort cases one-by-one.

This constitutes the Decision and Order of the Court.

Dated: 10/29/03

Louis B. York, J.S.C.